

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Sean Pak (Bar No. 219032)

seanpak@quinnemanuel.com

Adam Wolfson (Bar No. 262125)

adamwolfson@quinnemanuel.com

Andrew M. Holmes (Bar No. 260475)

drewholmes@quinnemanuel.com

50 California Street, 22nd Floor

San Francisco, California 94111-4788

Telephone: (415) 875-6600

Facsimile: (415) 875-6700

Attorneys for AliveCor, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AliveCor, Inc.,

Plaintiff,

vs.

Apple Inc.,

Defendant.

CASE NO. 4:21-cv-03958-JSW

**DECLARATION OF ADAM WOLFSON
IN SUPPORT OF PLAINTIFF
ALIVECOR, INC.'S COMBINED REPLY
IN FURTHER SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND OPPOSITION TO
APPLE INC.'S CROSS-MOTION FOR
SUMMARY JUDGMENT**

The Honorable Jeffrey S. White

Declaration of Adam Wolfson

I, Adam Wolfson, declare as follows:

1. I am a partner with the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, counsel for plaintiff AliveCor, Inc. (“AliveCor”) in the above-captioned action. I make this declaration in support of AliveCor’s Combined Reply in Further Support of Its Motion for Partial Summary Judgment and Opposition to Apple Inc.’s Cross-Motion for Summary Judgment (“Motion”).

2. In the below paragraphs, I attach and identify several exhibits AliveCor cites in support of its Motion. I provide certain excerpts and quotations that I believe are useful for the Court’s analysis of that Motion, but also note the exhibits themselves contain highlighting that AliveCor applied for the same purpose. These highlights typically exceed what I excerpt in this declaration.

3. Attached as **Exhibit 46** is a true and correct copy of a document produced by Apple to AliveCor in this case bearing Bates APL-ALVCOR_00669487 (Caldbeck Ex. 82)¹. This

[REDACTED]

4. Attached as **Exhibit 47** is a true and correct copy of a webpage entitled “Track your AFib History with Apple Watch” from Apple’s support page (Serwin Ex. 3). On page 4 of this document, Apple informs users of its “AFib History” feature—a feature that “periodically checks your heart rhythm for signs of AFib”—that “[s]ince the irregular rhythm notifications feature is not intended for people with AFib, [] is turned off automatically when you set up AFib History.”

5. Attached as **Exhibit 48** is a true and correct copy of a document produced by Apple to AliveCor in this case bearing Bates APL_ALVCOR_00436045 (Tan Ex. 25). In this [REDACTED]

¹ “(__ Ex. __)” is used to identify documents that were introduced as exhibits in depositions pursuant to this case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

6. Attached as **Exhibit 49** is a true and correct copy of the deposition transcript of Mr. Frank Petterson, AliveCor’s former Chief Technology Officer, taken on January 18, 2023.

7. Attached as **Exhibit 50** is a true and correct copy of a document produced by Apple to AliveCor in this case bearing Bates APL_ALVCOR_00078856 (Tan Ex. 14). In this [REDACTED]

8. Attached as **Exhibit 51** is a true and correct copy of the deposition transcript of Dr. Michael Foley, Apple’s industry expert in this case who provided opinions with respect to software development and release management best practices. This deposition was taken on June 21, 2023.

9. Attached as **Exhibit 52** is an index of customer complaints from after Apple’s introduction of HRNN in watchOS 5. Users reported issues such as inaccurate heart rates and heart rates not registering during exercise.

10. Attached as **Exhibit 53** is a true and correct copy of a document produced by Apple to AliveCor in this case bearing Bates APL-ALVCOR_00658035 (Tan Ex. 18). In this March 2015 email exchange, a third-party app developer asks Apple a series of questions regarding the Watch’s heartrate data, including “how often the the [sic] watch will be putting data into HealthKit,” and “What form will that data take?” (‘035). Christopher Tan responds on behalf of Apple: “We have not shared that information.” *Id.*

11. Attached as **Exhibit 54** is a true and correct copy of a document produced by Apple to AliveCor in this case bearing Bates APL-ALVCOR_00034941 (Shapiro Ex. 66). This document is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Attached as **Exhibit 55** is a true and correct copy of a document produced by AliveCor to Apple in this case bearing Bates APL-ALVCOR_00878832 (Tan Ex. 24). In this

[REDACTED]

[REDACTED]

[REDACTED]

13. Attached as **Appendix A** is a collection of evidence that rebuts points made in Dr. Waydo's declaration (Dkt. 220-5). In particular, Appendix A addresses Dr. Waydo's claims regarding AliveCor's proposal for how Apple could have continued to make HRPO-generated heart rate values available to third-party app developers. It also addresses Dr. Waydo's assertions regarding the processing, memory, and other costs associated with continuing to make those HRPO-generated heart rate values available.

14. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on August 24, 2023 in Los Angeles, California.

DATED: August 24, 2023

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Adam B. Wolfson
Adam B. Wolfson